**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
| | ) | |
| Petition of Bell Atlantic for Relief | ) | CC Docket No. 98-11 |
| From Barriers to Deployment of | ) | |
| Advanced Telecommunications Services | ) | |
| | ) | |
| Petition of U S West for Relief from | ) | |
| Barriers to Deployment of Advanced | ) | CC Docket No. 98-26 |
| Telecommunications Services | ) | |
| | ) | |
| Petition of Ameritech for Relief from | ) | |
| Barriers to Deployment of Advanced | ) | CC Docket No. 98-32 |
| Telecommunications Services | ) | |

COMMENTS OF SPRINT

Sprint Corporation opposes the above-captioned petitions of Ameritech, Bell Atlantic and U S West for forbearance pursuant to §706 of the Telecommunications Act of 1996.[1] As Sprint will show below, although each of the three carriers asks for somewhat different relief and on somewhat different grounds, all three requests should be denied.

## I. INTRODUCTION AND SUMMARY

### A. Description of Requests

Bell Atlantic seeks relief under §706 in order to build, operate and offer services over a broadband network within its ILEC region without regard to LATA boundaries

[1] Codified at 47 USC Section 157 Note.

and without regard to the in-region entry requirements of §271 of the Communications Act of 1934, as amended ("the Act"). Bell Atlantic also seeks forbearance from the unbundled element and resale provisions of §251(c)(3) and (4) of the Act for its provision of broadband services "that operate at speeds greater than ISDN, including all xDSL services" (Petition at 3), and seeks permission to provide local and in-region interLATA services without regard to the Commission's price cap and separate affiliate rules.

U S West seeks forbearance under §706 to build and operate packet and cell-switched data networks across its LATA boundaries, and to carry interLATA data traffic incident to its provision of xDSL services. U S West also requests forbearance from the unbundling requirement in §251(c) for non-bottleneck elements (such as DSLAMs and ATM switches) used to provide advanced telecommunications capabilities. Finally, U S West seeks forbearance from §251(c) (4) with respect to "competitive" data services (Petition at 1).

Ameritech seeks §271 forbearance for non-circuit-switched data services and facilities, and requests limited relief from the separate affiliate requirements of §272 (Ameritech would consent to be subject to the more relaxed structural separations requirements of Fifth Report and Order in the Competitive Carrier Rulemaking). Ameritech also seeks rulings that its affiliate would not be subject to §251(c) and would be considered non-dominant.

All three RBOCs argue that the forbearance they request is necessary to give them the incentive to invest in and deploy high-speed broadband networks (as well as high-speed xDSL local services) in furtherance of the Congressional goals in §706. They argue that LATA boundaries are meaningless in the context of the packet or cell based

transmission services used in such networks. Bell Atlantic places major emphasis on the alleged congestion in the existing long haul Internet backbone networks, claiming that existing backbone providers have failed to invest sufficiently in new capacity. U S West, on the other hand, emphasizes the largely rural character of its service region and argues that the ban on in-region interLATA data transport inhibits it from offering backbone data networks and xDSL services in the low density areas that it serves.

B. Summary of Argument

There is nothing in §706 or its legislative history to suggest that its reference to forbearance was intended to be a substantive grant of forbearance authority, independent of §10. And §10 prohibits forbearance from §§251(c) and 271 until those sections have been "fully implemented." Even if §706 were deemed independent of §10, Commission action under §706(a) must be consistent with the public interest, and the constraints imposed by Congress in §10 inform the Commission as to the public interest factors to be considered in acting under §706.

Sections 271 and 251(c) are key to the development of local competition. Were premature relief granted from these sections, the RBOCs could confine their in-region interLATA activities to services provided to xDSL subscribers and may be willing to forego §271 relief for conventional voice services while keeping their local monopolies intact.

The RBOCs have not shown that the relief they seek is needed to give them an incentive to upgrade their local networks or to provide important public interest benefits. They each are free to provide all the services described in their petitions, without any of the regulatory restraints from which they seek relief, in the 35+ out-of-region states

where they are not ILECs. The fact that they instead seek special relief for in-region services shows that the local market for xDSL is not as open as they claim, and that they in fact are seeking to leverage their local monopolies.

The obligations of §251(c) do not unfairly discourage deployment of broadband xDSL services. Rather, the RBOCs are permitted to recover all of their costs, including profit, from unbundled network elements, and are entitled to as much of a profit from resale to CLECs as from retail sales.

Finally, the RBOCs have not shown that the relief they seek is warranted either to encourage deployment of xDSL to rural areas or to relieve Internet congestion.

## II. SECTION 706 PRECLUDES FORBEARANCE FROM §271 AND §251(c)

Section 706(a) of the 1996 Act directs this Commission and the states to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans...by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating measures that remove barriers to infrastructure investment." The RBOCs seize on the reference to "regulatory forbearance" in this section to argue that they should be permitted to enter the in-region interLATA market for services that can be offered over a high speed data network, freed of meeting the §271 tests for in-region interLATA entry and of their obligations as incumbent local exchange carriers under §251(c) of the Act. However, §10(d) of the Act, which gives the Commission substantive authority to forbear, expressly precludes the Commission (with exceptions not here relevant) from forbearing from applying the requirements of §§251(c) or 271 "until it determines that those requirements have been fully implemented."

Although the RBOCs claim that the reference to forbearance in §706 is a source of forbearance authority that is independent of §10,[2] there is nothing in either the language of §706 or its legislative history to show that this is the case. Section 706 must be construed in light of the underlying purposes of the Telecommunications Act of 1996, and it would be patently inconsistent with the provisions of that act to give the broad interpretation to "regulatory forbearance" in §706 that the RBOCs seek to invoke when Congress, in §10 of the Act, placed specific limitations on the Commission's authority to forbear.

Even if §706 of the 1996 Act were construed to grant the Commission forbearance authority independent of the provisions and limitations of §10 of the Act, the exercise of that authority is not left unconstrained, but instead must be exercised "in a manner consistent with the public interest, convenience, and necessity." Here again, the other provisions of the 1996 Act provide clear indication of Congress' views on what are the important elements of the public interest. Specifically the provisions of §271, which lays out a strict test for RBOC in-region interLATA entry, and §251(c), which imposes detailed interconnection obligations on incumbent local exchange carriers, are clearly at the forefront of Congress' view as to the limitations on activities of ILECs in general and RBOCs in particular that are required by the public interest. Indeed, it was for this reason that Congress, in §10(d) of the Act, expressly precluded forbearance from both provisions until those provisions had been "fully implemented."

[2] See Ameritech, n.61 at 34; Bell Atlantic at 10; and U S West at 39.

## III. THE COMMISSION SHOULD NOT ALLOW AN END RUN AROUND §271

The RBOCs argue that the high-speed Internet and packet-switched services here in question are different from the plain old telephone service that was the subject of the 1983 antitrust consent decree.[3] Alternatively, they ask the Commission to exercise its power to redefine LATA boundaries by creating a single LATA for such services.[4] However, the MFJ defined the telecommunications services to which it applied very broadly,[5] and the interLATA prohibition applied to all interLATA services, POTS and high-speed services, circuit-switched or packet-switched, alike.[6] In cases where the interLATA restriction was waived (see cases cited by Bell Atlantic in n.12 at 11), it was waived either because the RBOCs' local bottleneck did not give them leverage over the service in question or because conditions could be framed to prevent abuses of the bottleneck. Here, the RBOCs' local bottlenecks are part and parcel of their proposals: they seek regulatory exemption for end-to-end services they would provide over local facilities that are connected to their interLATA data networks.

Perhaps the clearest evidence of the fact that preservation and leveraging of the local bottleneck are central to RBOCs' proposals is the fact that each of them is free today to build a broadband network throughout the 35+ states that lie outside their ILEC

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[3] See Ameritech at 11-12; Bell Atlantic at 3, 11-12; and U S West at 27-35.

[4] See Ameritech at 14, and Bell Atlantic at 11-12.

[5] See U.S. v. AT&T, 552 F.Supp. 131, 229 (D.D.C 1982).

[6] See, e.g., U.S. v. Western Electric Co., 1989 WL 21992 (D.D.C), denying declaratory ruling that RBOCs could, in connection with a previously granted information services waiver, transport data from packet assemblers/disassemblers to a centralized processor outside the LATA boundaries.

region, become CLECs and lease unbundled loops from the ILEC to offer broadband service to end users in those other states without any of the constraints of §§271 or 251(c), and under the same regulatory framework that applies to any IXC or CLEC. The fact that they seek to offer these services only in-region shows that there is a critical difference which stems from their bottleneck ILEC service. It was this very use of the local bottleneck that resulted in the imposition of the MFJ in the first place and that caused Congress to include §271 in the 1996 Act.

Clearly, it is not consistent with the public interest to forbear from enforcing §271 at this time, or to evade the requirements of that section by creating one big LATA for the services in question.[7] That provision is the keystone of Congress' desire, in the 1996 Act, to see competition in all telecommunications markets. Premature entry of the RBOCs into the long distance market, in regions where they retain a local bottleneck monopoly, could allow them to leverage that monopoly into the long distance market and reduce the overall level of competition from today's levels. The Commission has expended much of its resources since the passage of the Act to attempt to open up local markets to a degree sufficient to allow RBOC in-region entry into the interLATA market, so that the 1996 Act's ultimate vision of competition in all markets could be realized. Sprint does not need to demonstrate to the Commission that this objective has not yet been reached.

Granting forbearance from §271 for services that can be offered over xDSL could scuttle much of the work that has already been done by the Commission and could

[7] It is far from clear that the Commission could change LATA boundaries for specific services, especially when, as will be shown, doing so could effectively scuttle §271.

preclude any further opening of the local market. Importantly, there is no technological reason why the xDSL services these RBOCs seek to offer to their subscribers cannot be used for ordinary voice traffic. Indeed, the definition of "advanced telecommunications capability" in §706(c) includes "high-quality voice" service. Ameritech (at 6) mentions voice service as one of the services that can be handled over the Internet and includes (at 3) Internet services as among those for which it seeks forbearance under §706. Clearly, much of the broadband equipment being offered is intended to facilitate voice service as well as data and information services. A recent U S West press release, relating to its strategic relationship with Cisco Systems for its packet data network, made plain that Internet telephony was part and parcel of its plans for xDSL service.[8] Similarly, Nortel is developing equipment for effective voice carriage over data networks.[9] Thus, it is only reasonable to expect voice services to be an integral part of the RBOCs' xDSL offerings.

Ameritech (at 13) and Bell Atlantic (at 19) claim to have a continuing commitment to satisfying the requirements of §271 for conventional voice services. However, if they are allowed to offer voice services over xDSL without regard to §271, their business plans and priorities may soon change. They may find that their most attractive business strategy would be to offer in-region long distance voice service over xDSL and to forego the quest for §271 authority for more conventionally provided voice service. By pursuing this strategy, the RBOCs could serve the customers – business and high-end residential – that account for most long distance traffic, without having to

[8] U S West Interprise press release, "Cisco's Acquisition of NetSpeed to Complement U S WEST INTERPRISE Networking's National Data and DSL Rollout," March 10, 1998.

[9] Nortel press release, "Nortel (Northern Telecom) and Nortel Dasa Demonstrate Focus on Webtone at CeBIT '98," March 18, 1998.

complete the opening of their local market to competition. This strategy would give them the best of both worlds: entry into the long distance market while preserving their local monopoly. However, this strategy would not be in the public interest and would flatly contravene Congress's goals in passing the 1996 Act.

## IV. THE RBOCs HAVE NOT JUSTIFIED FORBEARANCE FROM §251(c)

The Commission should be equally suspicious of the RBOCs' request to exempt local xDSL service from the unbundling and resale requirements of §251(c). Their claim rests on the assertions that the copper loop is the only local bottleneck facility and that its continued availability to other competitors as a UNE (and the availability of alternative technologies) will fully enable other CLECs to replicate and compete with their xDSL services.

The best refutation of this assertion (and, as discussed above, the §271-related aspects of their petitions) is the RBOCs' own behavior. None of these RBOCs faces any of the requirements, from which they here seek forbearance, in their out-of-region territories. They can build interLATA high-speed broadband networks outside their ILEC regions, and can become CLECs, attaching their xDSL equipment to loops purchased as unbundled network elements from the ILEC, freed of the pricing restrictions applied to ILECs, the separate subsidiary requirements of §272, and the unbundling and resale requirements of §251(c). However, the only one of the three petitioners that has demonstrated any interest in providing such service outside its region is U S West, and in describing its out-of-region data activities (at 7-8) U S West appears only to provide long haul service, not service as a CLEC to any significant degree.

The fact that RBOCs seem exclusively interested (in two cases) or primarily interested (in the case of U S West) in providing these advanced services in-region, when they are free to do so out-of-region, is strong evidence that their existing local bottlenecks are the linchpins of their business cases. If, as they claim in defense of their requested exemption from §251(c), it is an easy matter for competing service providers to attach their own xDSL equipment to an unbundled loop, or to utilize alternative access technologies, one would expect vigorous out-of-region entry by these RBOCs.

In addition, just as the RBOCs could use their requested forbearance of xDSL from §271 to obviate the need for further §271 relief, as discussed above, the RBOCs could use their requested forbearance for xDSL service from §251(c) to deregulate a substantial amount of their existing service, merely by placing that service over xDSL loops. One switch manufacturer recently announced that it has developed line cards which permit Universal ADSL access into its conventional switches.[10] Although all forms of xDSL can be used for voice service, this development, if replicated by other switch manufacturers, could expand the RBOCs ability to use xDSL for ordinary telephony, and thus magnify the scope of services exempted from §251(c).

Furthermore, Sprint does not believe that forbearance from §§251(c)(3) and (4) is necessary for the deployment of xDSL. Ameritech, GTE, SBC and U S West are already commercially offering xDSL in some locations.[11] The fact that these major ILECs are willing to deploy xDSL already without regulatory forbearance should be regarded as a strong indication that sufficient business incentives exist without such forbearance.

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[10] Siemens AG press release, "Siemens to Offer Universal ADSL to 150 Million Telephone Subscribers Worldwide," March 26, 1998.

[11] See Bell Atlantic Petition, Attachment 2, p.21.

Indeed, HDSL has been routinely deployed by ILECs for the past three years to provision T-1 lines. Other "flavors" of xDSL are simply minor technical progressions from HDSL.

Under the standards of §251(c), the RBOCs will be entitled to recover all their legitimate costs in offering unbundled xDSL elements or xDSL as a resale service at a wholesale discount. Even under the TELRIC standard to which they have objected, they would be entitled to recoup all that they can legitimately ask for: recovery of all forward-looking costs, a reasonable allocation of shared overhead expenses, and a full return on their investment. And since xDSL services are of recent vintage, there is no problem of recovery of high historical costs arising from the use of economically obsolete plant.

Furthermore, offering xDSL service for resale at a wholesale discount merely requires the RBOCs to forego revenues associated with costs that are avoided when selling service at wholesale instead of retail. So long as the RBOCs price their retail xDSL services correctly – a matter within their control in the first instance – there is no reason why offering these services for resale should not be as profitable for the RBOCs as their retail offering. Thus, there is no need for forbearance from §251(c) for xDSL deployment to meet the legitimate business concerns of the petitioners.

At the same time, xDSL is a basic transmission building block that offers the only technology now available for bringing broadband communications to the home using existing telephone lines. As a result, it is critically important to ensure that this capability is available to CLECs through the unbundled network element and wholesale discount provisions of §251(c). It is obvious why these RBOCs would want to offer xDSL as a service to end users, but withhold it from competitors and force them to collocate in every end office to deploy their own xDSL equipment. However, the fact, discussed

above, that none of these RBOCs are deploying xDSL as CLECs in out-of-region areas by combining their own equipment with local loops from the ILEC is strong evidence that it is not feasible to expect CLECs to be able to match the RBOCs' xDSL offerings if they only have access to local loops as UNEs. Thus, the public interest would be best served – and the underlying objective of §706 best fulfilled – by making this basic broadband transmission capability available to competitors under §251(c), so that xDSL service will be available to the public on a competitive basis, enabling both ILECs and CLECs to use this capability to offer innovative services to customers.

## V. THE SPECIAL JUSTIFICATIONS FOR THE RBOCs' PROPOSALS ARE WITHOUT MERIT

### A. Bell Atlantic Has Not Shown That Its Proposal Would Eliminate Internet Congestion

The predicate for Bell Atlantic's request is that existing Internet backbone network providers have failed to increase the capacity of their networks to keep up with the burgeoning demand for high speed data. Bell Atlantic asserts in this regard that average transmission speeds over the Internet are roughly 40 kilobits per second, less than the speed of existing ISDN services already available to most of Bell Atlantic's local customers and far less than the speeds of other access technologies being deployed.

The claim that data network providers are not investing in their networks and not expanding their capacity is patently false. Sprint, one of the largest packet switched data providers, as well as one of the largest Internet backbone carriers, has continually and dramatically upgraded its network capacity. Sprint was the first carrier to construct a 100% digital, nationwide fiber optic network. It has continued to invest in new technology to increase the capabilities of that network. For example, in 1989, one fiber

pair had the capacity to carry 24,000 simultaneous voice conversations. Today, that same fiber pair can carry 500,000 simultaneous conversations, and by 1999, a pair of fibers will be able to handle 8,000,000 simultaneous conversations. This will represent a 33,000 percent increase in just a decade. The circuits Sprint uses for Internet backbone transmission today operate at speeds of up to 640 megabits per second, many times higher than the speed at which any end user can send or receive data.

In addition to the efforts of Sprint and other data network providers to expand the capacity of their networks, wholly new networks are springing up, including those of "upstarts" (as Bell Atlantic calls them[12]) Qwest, IXC Communications, Williams and Level 3 Communications. The emergence of these new networks and the expansion of the capacity of existing carriers shows that long-haul backbone capacity can and will expand in response to commercial demand. In that regard, the source cited by Bell Atlantic as having measured the slowness of the Internet has recently reported a 60% increase in Internet performance over year-ago levels. See Keynote Systems Press Release, "Internet Performance 60% Faster This Year Than 1997 – Keynote Systems Announces Internet Performance Results From January to February," March 11, 1998.

Furthermore, it is far from clear that if Bell Atlantic were permitted to build and operate its own long-haul network, it would do anything to appreciably reduce congestion on the Internet. It is true that the average throughput speed on the Internet is, by today's standards, not particularly fast. However, the sources of Internet congestion are many and complex and have little to do with the availability of raw backbone transmission capacity. On the contrary, Ameritech asserts (at 10) that congestion in LEC networks is

[12] See Petition, Attachment 2 at 23.

"the most significant choke point in data communications... ." Bell Atlantic acknowledges many of these sources of congestion in its Attachment 2. These other sources of congestion include: (1) local LEC switches and trunks, which can become congested during peak Internet usage periods; (2) congestion on the modem pools that Internet service providers (ISPs) use to establish contact with their end users; (3) insufficient capacity between the ISP and its backbone provider; and (4) insufficient capacity in the servers used by the web sites. In addition, congestion can and does occur at routers and NAPs.

ISPs and Internet backbone providers are taking a number of steps to reduce the sources of congestion that are within their control. In addition to capacity increases, these steps include (1) direct connections between backbone providers that minimize the number of routers that must be transited and avoid congestion in the NAPs; (2) deploying additional servers on a more localized basis, to avoid the need to go outside a local calling area for some of the most popular types of Internet-provided information; and (3) use by ISPs of high-speed ATM services, outside the Internet backbone, to access distant popular sites. Just as the data market has evolved to bypass the traditional switched voice network, through a combination of more distributed data processing, private lines and high-speed packet switched data services, the Internet industry is making similar strides to reduce congestion on the Internet.

To be sure, congestion does exist on the Internet, but given the many sources of this congestion, it is hard to envision how the entry of Bell Atlantic on the scene could cure all the congestion problems unless it were given total monopoly control over the Internet both as an ISP, a backbone provider and a content provider. And that is a step

far beyond what Bell Atlantic is seeking here, and one that would raise a host of additional policy issues.

B. Granting U S West's Petition Is Not Necessary To Bring Broadband Services to Rural Areas

U S West, as indicated earlier, stresses its ability to bring high-speed data services to rural communities.[13] U S West contends (at 40-41) that it can build an efficient data network in-region only if the interLATA restrictions are removed, and if it is allowed to do so, the higher-speed and lower-cost access it could provide to the Internet would fuel its subscribers' demand for xDSL services and thus make it more economically feasible to provide xDSL services in less dense areas of its service region.

However, U S West falls short of proving that there is a necessary link between its provision of xDSL services locally, and its proposed in-region long-haul backbone network. There are multiple backbone providers ready, willing and able to deploy higher-speed backbone services to smaller communities if and when the commercial demand is there. And U S West can stimulate such demand by upgrading its local network, including widespread offering of xDSL services. Given the explosive growth in demand for Internet access, there is little business risk to U S West (and other RBOCs) from investing in upgrades to the local networks, divorced from the ability to offer interLATA services of their own. Indeed, in view of the congestion that Internet traffic can cause in local circuit switches, it may be in the RBOCs' interest to deploy xDSL

[13] However, by its own admission (at 25), fully half of its local loops cannot be used for xDSL service, because of the distance between its subscribers and their central offices and because of the frequent use of multiplexers in its loop plant.

services simply to maintain the quality of conventional voice services.[14] The far greater risk – discussed above – would be to allow the RBOCs to circumvent the requirements of §271 for "data" services before the local market is truly open to competition.

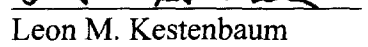
Sprint does not wish the Commission to discourage these RBOCs – or any other ILEC – from deploying xDSL service within their ILEC regions. Such service would be highly valuable to CLECs, Internet access providers and others in facilitating a whole new range of broadband services to end-user customers, both business and residential.

## VI. CONCLUSION

For the foregoing reasons, Sprint urges the Commission to deny these petitions and to do so promptly. Sprint is concerned that the pendency of these petitions could overhang any further deployment of xDSL by these or any other ILECs that are otherwise prepared to move forward. With even a possibility of being able to offer such service free of any effective regulatory constraint, it is only natural to expect the ILECs to wait and seek what happens to these petitions before proceeding any further with their deployment plans.

Respectfully submitted,

SPRINT CORPORATION



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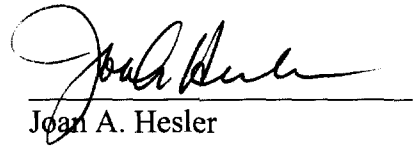
[14] See Sprint's March 24, 1997 Comments in Usage of the Public Switched Network By Information Service and Internet Access Providers, CC Docket No. 96-263.

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of Sprint Corporation in CC Docket No. 98-32 was Hand Delivered or sent by United States first-class mail, postage prepaid, on this the 6th day of April, 1998 to the parties on the attached service list:



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